

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
NOV 29 2007  
*[Signature]*  
CLERK

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CORNERSTONE DISTRIBUTING, INC., \* CIV 06-4267  
\*  
\* Plaintiff,

vs.

SCHUFT FAB II, INC.;  
NICH SCHUFT; and  
ANDREW H. ASHWILL,

Defendants.

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ORDER

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Defendants moved for a Protective Order, Doc. 47, on November 13, 2007, with the request being for a Protective Order pending the Court's ruling on the Defendant's Motion to Stay. The Court will now rule upon the Motion to Stay, so the Motion for Protective Order is denied as moot.

Defendant filed a Motion for Stay and Request for Expedited Review, Doc. 43, on October 24, 2007. The Plaintiff resisted the Motion for Stay.

Plaintiff urges that Defendants are estopped from requesting a stay. That argument is without merit.

After reviewing the pleadings in this matter, including the Second Amended Complaint and the Amended Counterclaim, it appears, taking the pleadings at face value since there is nothing else at this stage before the Court, even if a patent is granted to Plaintiff, there will be issues for trial between the parties to this action. If the patent is not granted, then there will be an issue, in addition to other possible issues, as to whether or not the agreement in question was null and void from its inception or from the time that the patent was refused. Defendant argues in its initial brief and reply brief that there is no enforceable contract until a patent is granted. If that is so, was the \$75,000.00 just paid as earnest money? The Court will not decide these issues at this time.

The Court recognizes that it has the authority to grant the stay, but given the multitude of claims by each party against the other, it appears that discovery should proceed so that trial can be held within a reasonable time after there has been a determination of whether or not a patent be issued on the Sidewinder

Given the period of time within which a patent claim or claims may be pending, and the numerous issues between the parties, only some of which are related to the issuance of the patent and others being contract and court claims, the Court suggests to the parties that they again attempt a resolution of their disputes with the assistance of Judge John E. Simko. Accordingly,

IT IS ORDERED:

1. That the Defendants' Motion for Protective Order, Doc. 47, is denied as moot.
2. That the Motion for Stay, Doc. 43, is denied; and the Motion for Expedited Review, Doc. 43, is granted.
3. That the Plaintiff's Request for Oral Argument, Doc. 49, is denied..

Dated this 20<sup>th</sup> day of November, 2007.

BY THE COURT:

  
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Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Suey Margulies  
DEPUTY